

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
1401 H Street, N.W.
Suite 4000
Washington, D.C. 20530
(202) 307-1858

Plaintiff,

v.

AMERICAN SKIING
COMPANY, and
Access Road
P.O. Box 450
Bethel, Maine 04217
(207) 824-3000

S-K-I LIMITED,
Airport Executive Plaza
#5
P.O. Box 5494
West Lebanon, N.H. 03784
(603) 298-5583

Defendants.

Civil No.:

Filed:

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendants named and alleges as follows:

1. The United States brings this antitrust action to prevent the proposed acquisition by American Skiing Company ("ASC"), formerly known as LBO Resort Enterprises Corporation, of

the ski resort businesses of S-K-I Limited ("S-K-I"). ASC and S-K-I are the two largest owner/operators of ski resorts in New England, and this transaction would combine eight of the largest ski resorts in this region. In particular, this acquisition would increase substantially the concentration among ski resorts to which eastern New England residents (i.e., those in Maine, eastern Massachusetts and Connecticut, and Rhode Island) practicably can go for weekend ski trips, and to which Maine residents practicably can go for day ski trips. As a result, this acquisition threatens to raise the price of, or reduce discounts for, weekend and day skiing to consumers living in these areas in violation of Section 7 of the Clayton Act, 15 U.S.C. Section 18.

2. During the 1994-95 ski season, ASC and S-K-I accounted for about 17 percent and about 26 percent of all skier days at resorts reasonably accessible to residents of eastern New England for weekend ski trips. The next largest competitor accounted for about 7 percent of skier days at such resorts. During the 1994-95 skiing season, ASC and S-K-I accounted for about 32 percent and about 19 percent of all skier days at resorts reasonably accessible to Maine residents for day trips. The next largest competitor accounted for about 12 percent of skier days at such resorts.

I. JURISDICTION AND VENUE

3. This action is filed under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. ASC and S-K-I sell skiing in interstate commerce. The Court has jurisdiction over this action and over the defendants pursuant to 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337. ASC has stipulated that venue is proper in this District under 28 U.S.C. § 1391(c).

II. DEFENDANTS

5. ASC, a Maine corporation headquartered in Newry, Maine, owns four ski resorts: Sunday River in Maine, Attitash/Bear Peak and Mt. Cranmore in New Hampshire, and Sugarbush in Vermont. During the 1994-95 ski season, ASC resorts accounted for 1.1 million skier days. ASC had revenues of over \$58 million in 1995.

6. S-K-I, a Delaware corporation, headquartered in West Lebanon, New Hampshire, owns four ski resorts: Killington and Mt. Snow/Haystack in Vermont, Waterville Valley in New Hampshire, and a 51 percent interest in Sugarloaf in Maine. During the 1994-95 ski season, S-K-I resorts accounted for 1.8 million skier days. S-K-I had revenues of more than \$109 million in 1995.

III. THE TRANSACTION

7. ASC proposes to acquire all the common stock of S-K-I for approximately \$137 million.

8. Pursuant to an Asset Purchase Agreement dated February 13, 1996, ASC agreed to acquire all of the ski resort services and operations of S-K-I and its subsidiaries. ASC will acquire S-K-I's four ski resorts and its 51 percent interest in Sugarloaf.

IV. TRADE AND COMMERCE

9. The business of skiing comprises all services related to providing access to downhill skiing and snowboarding, including, but not limited to, providing lifts, ski patrol, snowmaking, design, building, and grooming of trails, skiing lessons, and ancillary services such as food service, entertainment, and lodging.

10. Most skiers must travel some distance from their homes to ski. Accordingly, travel time and expense is an important constraint on the alternatives available to a skier. In addition, ski trips vary in length, e.g., a single day, two days over a weekend, or longer periods on more extended vacations. The distance people are willing to travel for skiing depends in part on how long the ski trip will last. The longer the ski trip, the greater a skier's willingness to travel. In addition, skiers on longer trips generally demand more options in terms of the number of trails and chair lifts, the variety of difficulty levels, accommodations, nightlife and other amenities. Consequently, depending on, among other things, the duration of a

given ski trip, the number of resorts practicably available to a skier will vary according to the time and expense required to travel to, and the qualitative aspects of, the possible alternatives.

11. Ski resorts sell skiing to groups, such as ski clubs, and to families, couples, and individuals. These sales are made both directly and through tour operators, travel agents, and wholesalers.

12. The duration of a ski trip and the distance traveled by the skier can be identified easily by ski resorts. As a consequence, ski resorts can and do offer different prices to skiers depending on where they come from and how long they plan to stay at the resort. For example, consecutive-day passes can be offered at a discount off the single day ticket to attract weekend skiers. Discounts can be given to a skier who presents a drivers license from a more distant state without the same discounts being offered to local residents, who may have fewer choices. Also, coupons can be put in local papers or sent out by direct mail, targeted to skiers in particular geographic areas. Promotions can be targeted to skiers in defined locations without significant risk that skiers in other locations will be able to learn about and take advantage of the lower price being offered. In addition, ski resorts routinely offer discounts on lift ticket prices when tickets are packaged with lodging, either by offering such "ski and stay" packages directly to skiers or by selling

discounted lift tickets to the owner of a hotel or inn, who in turn sells a package to skiers. As a result, ski resorts can and do routinely charge different prices for skiing depending on the length of stay and the residence of the skier.

Relevant Markets

13. Downhill skiing differs from all other winter recreational activities, such as cross-country skiing, ice skating, sleigh rides, tobogganing, and taking cruises to places with hot climates. A small but significant and nontransitory increase in prices for skiing would not cause a significant number of downhill skiers to substitute other products for skiing.

14. Geographic markets for skiing are regional. Skiers are not willing to travel an unlimited distance to ski. Traveling to distant ski resorts imposes a burden on the skier, either in the form of excessive driving time or of a large additional expense for airfare.

15. The distance a skier will travel to a ski resort depends in part on the length of time that skier will stay at the resort and on the qualitative characteristics of the resort.

Eastern New England Weekend Skiers

16. ASC and S-K-I both provide skiing to eastern New England weekend skiers at each of their ski resorts.

17. Eastern New England residents can practicably turn only to a limited number of resorts with adequate services (e.g.,

accommodations, number and variety of trails, and other amenities) in Maine, New Hampshire, and Vermont for weekend skiing trips. These are the resorts that have the necessary qualities and are within a reasonable traveling distance for eastern New England weekend skiers.

18. Smaller ski resorts and resorts located farther away cannot and would not after this transaction constrain prices charged to weekend skiers living in eastern New England. Although eastern New England skiers occasionally choose to ski at such smaller or more distant resorts, skiing at such resorts is not a practical or economic alternative for most eastern New England weekend skiers most of the time.

19. Ski resorts in Maine, New Hampshire, and Vermont that have the necessary qualities and services to attract weekend skiers from eastern New England can charge different prices to these skiers than they charge to others. Eastern New England weekend skiers can be identified easily by the ski resorts that are reasonable alternatives for these consumers. These ski resorts can charge eastern New England weekend skiers prices that differ from prices charged to day skiing customers, to customers coming from other parts of the country, or to customers who stay longer than a weekend. Ski resorts could offer coupons for discounted lift tickets packaged with lodging and/or airfare, either through direct mail or through advertising in local papers, in, for example, the New York, Washington D.C., or

Atlanta metropolitan areas, and not offer such coupons in eastern New England. A single firm controlling all the resorts in Maine, New Hampshire, and Vermont with adequate services for weekend skiing would be able to raise prices a small but significant amount to eastern New England weekend skiers without losing so much business as to make the price increase unprofitable.

20. The provision of weekend skiing to eastern New England residents is a relevant market (i.e., a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act.

Maine Day Skiers

21. ASC provides skiing to Maine day skiers primarily at its Sunday River, Attitash/Bear Peak, and Mt. Cranmore ski resorts. S-K-I provides skiing to Maine day skiers primarily at its Sugarloaf and Waterville Valley ski resorts.

22. Maine residents can practicably turn only to resorts in Maine and eastern New Hampshire for day skiing trips. These are the resorts that are within a reasonable traveling distance for Maine day skiers.

23. Ski resorts located farther from Maine cannot and would not after this transaction constrain prices charged to day skiers living in Maine. Although Maine skiers occasionally choose to ski at such more distant resorts, skiing at such resorts is not a practical or economic alternative for most Maine day skiers most of the time.

24. Ski resorts in Maine and eastern New Hampshire can charge different prices to Maine day skiers than they charge to other skiers. Maine day skiers can be identified easily by the ski resorts that are reasonable alternatives for these consumers. These ski resorts can charge Maine day skiers prices that differ from prices charged to out-of-state skiers or to Maine skiers who stay multiple days. A single firm controlling all the ski resorts in Maine and eastern New Hampshire would be able to raise prices a small but significant amount to Maine day skiers without losing so much business as to make the price increase unprofitable.

25. The provision of day skiing to Maine residents is a relevant market (i.e., a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act.

Anti-Competitive Effects and Entry

26. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), defined and explained in Appendix A, a combination of ASC and S-K-I would substantially increase concentration in the markets alleged in this complaint.

Eastern New England Weekend Skiers

27. The approximate post-merger HHI, based on the 1994-95 total skier days of ski resorts located in Maine, New Hampshire, and Vermont capable of attracting and accommodating weekend skiers would be approximately 2100 with a change in HHI of about 900 points. During the 1994-95 skiing season, ASC and S-K-I

accounted for about 17 percent and about 26 percent of skier days at resorts reasonably accessible to weekend skiers living in eastern New England. If the proposed acquisition were consummated, the combined company would account for over 43 percent of skier days in this market.

28. The elimination of the competition between S-K-I and ASC resulting from this transaction would reduce competition significantly in the market for eastern New England weekend skiers. In particular, the ASC and S-K-I resorts would be likely to raise prices or reduce the level of discounts offered to weekend skiers from eastern New England without having to raise prices or reduce discounts to day skiers, to skiers staying more than a weekend, or to skiers coming from places outside eastern New England.

Maine Day Skiers

29. The approximate post-merger HHI, based on the 1994-95 total skier days of ski resorts located in Maine and eastern New Hampshire, would be over 2900 with a change in HHI of over 1200 points. During the 1994-95 skiing season, ASC and S-K-I accounted for about 33 percent and about 19 percent of skier days at resorts reasonably accessible to day skiers living in Maine. If the proposed acquisition were consummated, the combined company would account for 50 percent of skier days in this market.

30. The elimination of the competition between S-K-I and ASC resulting from this transaction, would reduce competition significantly in the market for Maine day skiers. In particular, the ASC and S-K-I resorts would be likely to raise prices or reduce the level of discounts offered to Maine day skiers without having to raise prices or reducing discounts to out-of-state skiers or to skiers staying multiple days.

Entry

31. Successful entry into the skiing business would be difficult, time consuming, and costly, as well as extremely unlikely. Entry therefore would not be timely, likely, or sufficient to prevent any harm to competition.

V. HARM TO COMPETITION

32. The effects of the proposed transaction between ASC and S-K-I may be to lessen competition substantially and to tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

33. The transaction would have the following effects, among others:

- a. competition generally in providing skiing to eastern New England weekend skiers would be lessened substantially;

- b. actual competition between ASC and S-K-I in providing skiing to eastern New England weekend skiers would be eliminated;
- c. discounting to eastern New England weekend skiers by ASC and S-K-I resorts would likely be reduced or eliminated;
- d. prices for skiing to eastern New England weekend skiers would be likely to increase;
- e. competition generally in providing skiing to Maine day skiers would be lessened substantially;
- f. actual competition between ASC and S-K-I in providing skiing to Maine day skiers would be eliminated;
- g. discounting to Maine day skiers by ASC and S-K-I resorts would likely be reduced or eliminated;
and,
- h. prices for skiing to Maine day skiers would be likely to increase.

VI. REQUESTED RELIEF

Plaintiff requests:

1. That the proposed acquisition of the skiing businesses of S-K-I by ASC be adjudged to violate Section 7 of the Clayton Act;

2. That the defendant be permanently enjoined from carrying out the Asset Purchase Agreement, dated February 13, 1996, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of ASC and S-K-I;

3. That Plaintiff be awarded the costs of this action; and

4. That Plaintiff have such other relief as the Court may deem just and proper.

Dated: June _11_, 1996

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